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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,377	10/13/2003	Michael Cohen	LA-6658-109.US	4408
167	7590	11/04/2005		
FULBRIGHT AND JAWORSKI LLP 555 S. FLOWER STREET, 41ST FLOOR LOS ANGELES, CA 90071			EXAMINER CLEMENT, MICHELLE RENEE	
			ART UNIT	PAPER NUMBER
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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/685,377  
Filing Date: October 13, 2003  
Appellant(s): COHEN, MICHAEL

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Michael Cohen  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 6/30/05 appealing from the Office action mailed 12/17/04.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 1/7/05 has been entered and the amendment to the drawings filed on 3/8/05 has not been entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

Appellant's brief presents arguments relating to whether the amendment filed 11/11/04 adding Figures 3 and 4 and the accompanying description is new matter. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,289,781	COHEN	9-2001
6,082,240	MIDDIONE et al.	7-2000
6,575,075	COHEN	6-2003
6,082,240	FERGUSON	12-1978

GB patent 2277141 Slater 10-1994

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (US Patent # 6,282,781) in view of Middione et al. (US Patent # 6,082,240). Cohen discloses a plurality of composite armored plates (reference 22) that can be used for providing ballistic protection for armored vehicles as claimed by applicant. The plates have the capability, and are therefore adapted for, attachment to the chassis of an armored vehicle (it is noted that any means, including placing on top of the vehicle, be used to attach the plates to the vehicle since applicant has not claimed any specific way of attaching the plates). The plates are also capable, and therefore sized to cover at least one opening contained within a vehicle (it is also noted that applicant has not claimed a specific size and therefore any size that is capable of meeting the limitation of covering an opening meets the claimed limitation and the limitation "sized to cover" is interpreted as defining the size of the plate rather than requiring a specific orientation with respect to an opening since an armored vehicle can have any number and sizes of openings). Although Cohen does not specifically disclose an armored combat vehicle chassis having a plurality of openings, Middione et al. does. Middione et al. teaches a modular armor mounting

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system for mounting armor to an armored vehicle (reference 16), the vehicle having openings (Figures 2, 4, and 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the mounting system and vehicle with openings as taught by Middione et al. with the composite armored plates as taught by Cohen. The suggestion/motivation for doing so would have been to obtain an armoring system in which loads were not concentrated around the mounting screws.

Claims 10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen and Middione et al. as applied to claims 1-9 above and further in view of Cohen (US Patent # 6,575,075) ('075). Although neither Cohen nor Middione et al. expressly disclose the addition of a third backing layer of metal, '075 does. '075 teaches a composite armored plate including a third backing layer (reference 50) of aluminum. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the additional backing layer as taught by '075 with the armor device of Middione et al. and Cohen. The suggestion/motivation for doing so would have been to obtain extra protection for the vehicle and occupants.

Claims 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen and Middione et al. as applied to claims 1-9 above and further in view of Ferguson (US Patent # 4,131,053) or Slater (GB Patent # 2,277,141). Although neither Cohen nor Middione et al. expressly disclose the backing layer comprising a polymeric matrix composite with reinforcing fibers, the fibers selected from the group consisting of carbon fibers, aramid fibers and glass fibers, both Ferguson and Slater do. Ferguson and Slater teach a three layer armor plate with backing layers comprising glass fibers (Ferguson, col. 2, lines 49-51) and glass fiber

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impregnated with an epoxy resin (Slater, p. 6, lines 20-23). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the backing layer of glass fibers and impregnated glass fibers as taught by either Ferguson or Slater with the armor device as taught by Middione et al. and Cohen. The suggestion/motivation for doing so would have been to obtain extra protection for the vehicle and occupants.

#### **(10) Response to Argument**

Applicant argues that the armor plates are not adapted for attachment to a chassis of an armored vehicle since Cohen does not disclose an armored vehicle or an armored vehicle having a plurality of openings. It is well settled that the recitation that an element that is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. The armor plates disclosed by Cohen have the ability to be attached to the chassis of a vehicle. Furthermore, they have the ability to cover an opening of an armored vehicle chassis. The reliance on the Middione et al. reference is for an armored combat vehicle chassis having a plurality of openings, it is the armor disclosed by Cohen that is combined with the armored combat vehicle chassis having opening as taught by Middione et al. It is noted that armored combat vehicles have openings other than screw hole openings, it is ANY opening of the vehicle, including windows, port holes, doors, ammunition chutes, etc., that could be covered by the armor plate disclosed by Cohen. It is further noted that the armored plates disclosed by Cohen are presumably intended to have a use, such as protecting objects and personnel, since on their own they would not serve their intended purpose and it is well known in the art to apply armor plates to vehicles.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michelle Clement



Conferees:

MC 

PP 